RESIDENTIAL TENANCIES ACT 2004

Private Residential Tenancies Board Tribunal

Report of Tribunal Reference No: TR212/2011/DR643/2011
Case Reference No: DR643/2011

Appellant Tenants:	Edward Sofian and Maria Chereches
Respondent Landlord:	John Gallagher
Address of Rented Dwelling:	19 Woodleigh Oak, Highfield Road, Rathgar, Dublin 6 (referred to as the 'dwelling' in this report)
Tribunal:	Finian Matthews (Chairperson) Orla Coyne Anne Leech
Venue:	Tribunal Room, Private Residential Tenancies Board, Floor 2 O'Connell Bridge House, D'Olier Street, Dublin 2.
Date and Time of Hearing:	17 April, 2012 at 2.30 p.m
Attendees:	
For the Appellant:	Maria Chereches (representing both Tenants)
For the Respondent:	Barry Gallagher (Landlord's representative)
Also in Attendance:	Gwen Malone Stenographers.

1. Background:

On 15 April, 2011 the Appellant Tenants made an application for dispute resolution services to the Private Residential Tenancies Board (referred to as "the PRTB" in this report).

Pursuant to section 93 of the Residential Tenancies Act, 2004 (referred to as "the Act" in this report) the PRTB arranged for the matter to be the subject to an adjudication under section 97 of the Act and an adjudication was held on 29 July, 2011 in the presence of the the tenants, their representative from Threshold and the landlord's representative. The Adjudicator's report dated 3 August, 2011 including his Findings of Fact and Determination in relation to the dispute was sent to both parties. The Adjudicator determined that:

1. The Appellant Tenants' application regarding invalid notice of termination was not upheld, in respect of the tenancy of the dwelling at 19 Woodleigh Park, Highfield Road, Rathgar, Dublin 6.
2. The Appellant Tenants and all persons residing in the dwelling shall vacate the dwelling within 14 days of the date of issue of the Determination Order by the Board.
3. The Respondent Landlord shall pay the Appellant Tenants the sum of €200 within 14 days of the date of issue of the Determination Order by the Board, being compensation of €300 for breach of Landlord obligations and breach of the Housing Standards for Rented Houses Regulations 2008, less €100 for breach of Tenants obligations, in respect of the tenancy of the dwelling.
4. The Appellant Tenants shall also pay any further rent outstanding from 29 July, 2011 at the rate of €750 per month or part thereof, unless lawfully varied, and any other charge as set out in the terms of the tenancy agreement for each month/day or part thereof, until such time as the Appellant Tenants vacate the dwelling.
5. The Respondent Landlord shall refund the entire of the security deposit of €850 to the Appellant Tenants on gaining vacant possession of the dwelling, less any amounts properly withheld in accordance with the provisions of the Act.

Subsequently a valid notice of appeal was received by the PRTB from the Appellant Tenants on 26 August, 2011.

The PRTB, at a Board meeting on 31 August, 2011 approved referral to a Tenancy Tribunal of the appeal of the Tenants. In accordance with Sections 102 and 103 of the Act, the PRTB constituted such a Tenancy Tribunal and appointed Finian Matthews, Orla Coyne and Anne Leech as Tribunal members. The Board appointed Finian Matthews to be the Chairperson of the Tribunal (referred to as "the Chairperson" in this report). On 23 March, 2012 the parties were notified of the constitution of the Tribunal, were provided with details of the date, time and venue set for the hearing and were provided with a copy of the Tenancy Tribunal Hearing Procedures.

On 17 April, 2011 the Tribunal convened a hearing at 2.30 p.m at the offices of the PRTB, Floor 2, O'Connell Bridge House.

2. Documents Submitted prior to the Tribunal Hearing:

The PRTB file

3. Documents Submitted at the Hearing:

None

4. Procedure

The Chairman welcomed the Parties to the Tribunal and stated that it had been established to hear an appeal by the Appellant Tenants against a determination made following an adjudication held on 29 July, 2011 in the case of a dispute between the Tenants and the Landlord in respect of a tenancy at 19 Woodleigh Oak, Highfield Road, Rathgar, Dublin 6. He introduced the members of the Tribunal to the parties.

He asked the Parties present and to identify themselves and to state in what capacity they were attending the Tribunal hearing. He confirmed with the Parties that they had received the relevant papers from the PRTB in relation to the case and that they had received and understood the PRTB document entitled "Tribunal Procedures". Both Parties confirmed that they had done so. The Chairman said that he would be happy to clarify any queries in relation to the procedures either then or at any stage over the course of the Tribunal hearing.

The Chairperson then explained that the Tribunal hearing, as stated in its procedures, was not intended to be very formal, but that the Parties must follow any instructions given by the Chair, that evidence would be given under Oath or Affirmation, would be recorded by the stenographer present and that a transcript of the proceedings would be produced based on that audio recording. The parties confirmed that they had no objection to the arrangements for recording the proceedings. The Chairperson also stated that it was against the law for anyone giving evidence to refuse to take the Oath or Affirmation, to refuse to produce any document in his control required by the Tribunal, to refuse to answer any question put by the Tribunal, or to knowingly provide materially false or misleading information to the Tribunal. He pointed out that an offence may be prosecuted by the PRTB through the courts and a successful conviction could result in a fine of up to €3,000 or up to 6 months imprisonment or both.

The Chairperson added that the Appellant Tenants would be invited first to present their case, including the evidence; this would be followed by an opportunity for cross-examination by the Respondent Landlord; that the Respondent Landlord would then be invited to present his case, followed by an opportunity for cross-examination by the Appellant Tenants. He said that members of the Tribunal would ask questions of both Parties from time to time. He also directed that neither Party should interrupt the other when direct evidence was being given.

He also said that at the end of the hearing, both the Appellant Tenants and the Respondent Landlord would be given the opportunity make a final submission should they so wish.

The Chairperson reminded the Parties that that the Determination Order of the PRTB, based on the report of the hearing, would decide the issue between the parties and could be appealed to the High Court on a point of law only.

All persons giving evidence to the Tribunal were then sworn in/as was the Interpreter.

5. Matters agreed between the Parties

Before taking submissions from the parties the Chairperson said that the Tribunal had read the documentation in relation to the case as circulated to the parties and it appeared to the Tribunal that the following factual matters in relation to the tenancy were not in dispute between the parties:

- The tenancy commenced on 4 February, 2005
- The term of the tenancy specified in the letting agreement was 12 months
- The tenancy terminated on 4 December, 2011 following the service of notice of termination by the Appellant Tenants
- The rent at the start of the tenancy was €850 per month
- The rent was subsequently reduced by the tenants to €750 per month
- There were no rent arrears on the expiration of the tenancy
- The Appellant Tenants paid a deposit of €850
- The deposit has been re-paid in full by the Respondent Landlord.

Both parties accepted that they were in agreement in relation to the foregoing matters.

The Appellant Tenants were invited to open their case.

6. Submissions of the Parties:

Appellant Tenants Case:

Opening her evidence the Appellant Tenant stated that she disagreed with the Adjudicator in his interpretation of the Tenants' decision in February 2009 to remain in the dwelling, despite having found new accommodation on which they had paid a deposit. She said that the Tenants had wanted to move after the birth of their first child and had found an alternative apartment which they wanted to rent. However, she said that their prospective new Landlord continually made promises in relation to issues in the new apartment that needed to be attended to, but never fulfilled any of these promises. As a result, she said the Tenants eventually decided not to move.

The Appellant Tenant said that in January 2011 the tenants reduced the rent to €700 per month to get the Landlord's attention, because the Respondent Landlord's representative had promised to call to the dwelling after they had told him in December, 2010 about the broken seal in the oven, but never did so. She said that the tenants also tried to meet with the representative but were never able to do so. She said that the Landlord had ignored the tenants for months and she found this to be humiliating. She said she could not

understand why the Landlord was not prepared to meet his obligations. When asked if she had ever put any request in writing to the Landlord, the Appellant Tenant said she thought she might have done, but had no copy of any such letter. She added that when there was a problem with a heater in the living room in 2008 this was attended to promptly by the Landlord. She said, however, that the tenants' relationship with the Landlord deteriorated quickly when he was told about the problem with the seal in the oven in December 2010 and this was ignored. The Appellant Tenant said she had her second child in 2011. On the question of whether she considered the dwelling to be over-crowded the Appellant Tenant said that while it was not suitable for a family, it was functional and it was possible for them to live there comfortably.

The Appellant Tenant added that no work was done in the dwelling until March 2011, and at that point the Landlord also served the tenants with a notice of termination. She was of the view that it was only because of the termination notice that the Landlord was prepared to address the problems in the dwelling. She said these included the problem with the oven, the need to circulate air from the extractor fan on the oven to the outside and a problem with the heater in the bedroom. She said she was not aware if she had ever brought the problem with that heater to the attention of the Landlord. She said that works started in the dwelling but then stopped because of differences that arose between the workman sent by the Landlord and her partner and co-tenant regarding the work start time of the workman and the location of the replacement heater. She said that the workman left and never came back to finish the works. She also said that when the old oven in the dwelling was replaced it was left outside the door of the dwelling for a considerable period. She added that the new circulation system for the oven extractor was never put in place.

The Appellant Tenant said that it was incorrect to suggest that they had not been prepared to allow the Landlord's workmen access to the dwelling to have the necessary works there carried out. She also said, however, that the needs of her young children also had to be taken into consideration, and that it was a question of coming to some arrangement to have the works carried out suitable to the needs of all parties. This however did not prove possible. The Appellant Tenant also described an argument that occurred between her partner and co-tenant and the Appellant Landlord's representative in March 2011 when the latter had called to the dwelling. She said that there had been a lot a shouting, the Gardai were called following which the Landlord's representative left. She added that essentially there had been no further contact between the tenants and the Landlord after that until they left the dwelling in December 2011.

The Appellant Tenant told the Tribunal that she did not see the Appellant Landlord's letters of 22 March, 2011 or 4 April 2011 formally requesting access to the dwelling to have the necessary works carried out until June 2011. Apologising for any confusion, she subsequently agreed that the tenants had received the letter dated 22 March 2011 at the same time as they received notice of termination of the tenancy, but she maintained that the tenants had not received the letter of 4 April at that time.

The Appellant Tenant also submitted to the Tribunal that the net amount of damages awarded to the Tenants by the Adjudicator did not adequately reflect the way in which the Tenants had been treated by the Respondent Landlord. She also said that the tenants

had always tried to be good tenants, had kept the apartment very well and that the Landlord had returned their deposit without question.

Respondent Landlord's case.

The Respondent Landlord's representative said in his evidence that the dwelling was in perfect condition when let to the Appellant Tenants. He said that it had been necessary at an early stage to fix a light in the bathroom, with the result that this was somewhat un-sightly but was in proper working order. He said that there had been no difficulty at all with the tenancy until 2009, when the Landlord, his brother, told him that only €750 had come in rent for a particular month instead of the agreed €850. He said that he took this up with the tenants, but their response was that rents generally had come down. He said that he agreed reluctantly to leave the rent at the reduced figure of €750 per month.

The Respondent Landlord's representative said that there were no problems after that until Christmas week of 2010 when he met one of the tenants casually who told him about the problem with the oven door. He formed the view that the problem was not that serious and said that it slipped his mind to attend to it. He said that the Tenants contacted him by phone again in February 2011 upon which he visited the dwelling and found what he said was a dramatic deterioration in the condition of the dwelling. He agreed that a range of repairs and replacements were required in the dwelling and said that he had set about immediately addressing all the issues that had arisen. He said he sent an electrician who put in a new cooker and modified the oven extractor fan. He added that when the electrician was trying to install a new heater, the Appellant Tenants took issue with the location of the heater, following which the electrician left the dwelling. He said that he was not aware that the old cooker had been left outside the dwelling, until this was brought to his attention by the management company for the apartment complex, upon which he arranged to have the cooker removed. The Respondent Landlord said he had also sent a carpenter to the dwelling to have necessary wood-work repairs carried out in the dwelling but the carpenter had told him he would prefer not to do this work, while there were children present.

The Respondent Landlord's representative described what had happened when he called to the dwelling by arrangement on 18 March 2011 to discuss the shortfall in the rent over the previous three months and arrangements for having necessary works carried out. He said he also wanted to to check if the keys in his possession still worked in the door locks. He recounted the argument that had occurred with one of the Appellant Tenants and said that he left the dwelling on the advice of the Gardai. The Landlord's representative stated that the Respondent Landlord's subsequent letter of 22 March 2011 and the notice of termination he had issued to the tenants, were dropped in to the tenants in separate envelopes and were also posted to them. He said that following advice he had taken in the matter the Landlord had formed the view that the dwelling was not suitable to accommodate four tenants and that the Landlord could not be held responsible for trying to accommodate that number of tenants in unsuitable accommodation. He said that was why the Landlord had decided to issue notice of termination.

The Respondent Landlord's representative also said that the tenants had called in an Environmental Health Officer, who also identified the works that need to be carried out in

the dwelling, but he said that he could not carry out these works without the co-operation of the tenants. He said that he was willing at all times to carry out these works and to facilitate the tenants as far as practicable in whatever arrangements were made to carry out the works. He said that he had already embarked on some of the works outlined by the Environmental Health Officer but could not complete these because of the difficulty in trying to arrange a suitable time, in a situation where there were young children in the dwelling.

The Respondent Landlord's representative said that at the end of the tenancy the Appellant Tenants had asked him for a reference which he had given freely. He said that the Tenant attending the Tribunal had apologised to him for what had occurred and he was of the view that the tenancy had ended amicably. He also re-iterated that he had tried to facilitate the tenants and was of the view that they had over-reacted to the situation that had arisen.

The Chair thanked both parties for attending and advised them that following the hearing the Tribunal will prepare a report and make its Determination in relation the dispute and will notify the PRTB of that Determination.

7. Findings of the Tribunal and reasons therefor:

Having considered all of the documentation before it, including the Report of the Adjudication dated 3 August 2011, and having considered the evidence presented to it by the parties, the Tribunal's findings and reasons therefor are set out hereunder.

Finding: The Tribunal finds that the notice of termination dated 22 March, 2011 served by the Appellant Landlord on the Respondent Tenants was valid.

> **Reasons:** The Tribunal notes that the tenancy was a Part 4 tenancy, in that the tenant had been in occupation of the dwelling for a continuous period of 6 months. In those circumstances it was only open to the Respondent Landlord to terminate the tenancy for the stated reasons set out in the Table to section 34 of the Act. In the notice of termination the Appellant Landlord stated his reason for terminating the tenancy was that the dwelling was no longer suitable to the accommodation needs of the tenants and of any persons residing with them having regard to the number of bed-spaces contained in the dwelling and the size and composition of the occupying household. The foregoing stated reason is one of the grounds for termination listed in the Table to section 34 of the Act. The Tribunal is satisfied that, as a relatively small one-bedroom apartment, the dwelling was not suitable to the accommodation needs of the occupants consisting of two adults and two children. This was accepted by the Appellant Tenant in her evidence to the Tribunal.

The notice of termination of 22 March 2011 also complied in full with the provisions of section 62 of the Act. The Appellant Tenants were also given the required notice of 112 days as provided for in Table 1 to section 66 of the Act.

Finding: The Tribunal finds that the Appellant Tenants were in breach of their obligations under sub-section (a) of section 16 of the Act

Reasons: Under sub-section (a) of section 16 of the Act, a tenant must pay to the landlord the rent provided for under the tenancy concerned on the date it falls due for payment. In reducing their rent in 2009 from €850 per month to €750 per month without the Landlord's prior consent the Appellant Tenants were in breach of the foregoing statutory requirement, even in a situation where, as in this case, the Respondent Landlord subsequently agreed in effect to accept the lower rent.

The further reduction by the Appellant Tenants in their rent by an amount of €50 per month for a period of 3 months from January to March 2011, without the Landlord's consent, was a further breach of the provisions of sub-section (a) of section 16 of the Act, even though the arrears thus accumulated were subsequently paid by the Appellant Tenants.

Finding: The Tribunal finds that the Respondent Landlord is entitled to damages in the amount of €200 because of the breaches by the Appellant Tenants of the provisions of the Act.

Reason: The Tribunal is satisfied that the Respondent Landlord suffered loss and inconvenience as a result of the breaches by the Appellant Tenant of the provisions of Act relating to the payment of rent. The Tribunal considers that the appropriate quantum of damages to award to the Respondent Landlord in the circumstances of this case is €200.

In exercise of its powers, therefore, under section sub-section (1)(d) of section 115 of the Act the Tribunal directs that damages in the amount of €200 shall be paid by the Appellant Tenants to the Respondent Landlord.

Finding: The Tribunal finds that the Respondent Landlord was in breach of his obligations under sub-section (b)(ii) of section 12 of the Act

Reasons: Under sub-section (b)(ii) of section 12 of the Act, a Landlord is required generally to carry out to the interior of a dwelling all such repairs and replacement of fittings as necessary to maintain the interior and fittings in the condition they were in at the start of the tenancy and in compliance with any relevant prescribed standards.

While a problem with the cooker in the dwelling was brought to his attention in December 2010, the Respondent Landlord failed to take action in that regard until

February 2011. When he did take action to replace the cooker, he also failed to ensure that the old cooker was removed from outside the dwelling promptly, where it appears to have remained for some considerable time. In contrast with the foregoing specific breaches of his obligations the Tribunal notes that the Respondent Landlord through his representative undertook verbally and subsequently in writing to carry out a number of repairs and replace certain fittings in the dwelling, shortly after the defects in this regard were brought to his attention. The Tribunal is satisfied that the Respondent Landlord made genuine efforts to carry out these repairs and replace the fittings but was frustrated in his efforts to do so through the failure of the Appellant Tenants to co-operate in providing the necessary access to the dwelling to have the necessary works carried out. While it is understandable that the Appellant Tenants had concerns about repair works being carried out while there were young children in the dwelling, it is clear that the works could not be carried out unless the Respondent Landlord was given reasonable access to complete these works. The Tribunal has taken the impasse that arose between the tenants and the landlord with regard to the completion of the repairs into account in determining the level of any compensation to which the Appellant Tenants might be entitled because of the Landlord's failure to comply with his obligations.

Finding: The Tribunal finds that the Appellant Tenants are entitled to damages in the amount of €200 because of the breaches by the Respondent Landlord of the provisions of the Act.

Reason: The Tribunal is satisfied that the Appellant Tenant suffered loss and inconvenience as a result of the foregoing breach by the Respondent Landlord of his obligations under sub-section (b)(ii) of section 12 of the Act. Taking into account the failure on the part of the Appellant Tenants to co-operate with various efforts made by the Respondent Landlord to carry out necessary repairs to the dwelling, the Tribunal considers that the appropriate quantum of damages to award to the Appellant Tenants in the circumstances of this case should be at the lower end of the scale of damages that might be awarded in a case of this nature. The quantum of such damages payable in this case is determined therefore to be €200

In exercise of its powers, therefore, under section sub-section (1)(d) of section 115 of the Act the Tribunal directs that damages in the amount of €200 shall be paid by the Respondent Landlord to the Appellant Tenant.

8. Determination

REF: TR212/2011/DR643/2011

In the matter of Edward Sofian and Maria Chereches, Appellant Tenants and John Gallagher, Respondent Landlord, the Tribunal in accordance with section 108(1) of the Act, determines that:

- Damages in the amount of €200 payable to the Appellant Tenants on foot of a direction from the Tribunal for a breach by the Respondent Landlord of his obligations under section 12 of the Residential Tenancies Act, 2004 shall be off-set against damages in the amount of €200 payable to the Respondent Landlord on foot of a direction from the Tribunal for a breach by the Appellant Tenants of their obligations under section 16 of the said Act.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 26th of May 2012

Signed: _____

Finian Matthews, Chairperson
For and on behalf of the Tribunal.